

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC PASSMAN and ISHMAEL
ALVARADO, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

PELOTON INTERACTIVE, INC.,

Defendant.

Civil Action No. 1:19-cv-11711 (LJL)

**DECLARATION OF STEVEN N. FELDMAN
IN SUPPORT OF PELOTON INTERACTIVE, INC.'S
MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF
PELOTON'S MOTION TO EXCLUDE THE TESTIMONY OF PLAINTIFFS' EXPERTS**

I, Steven N. Feldman, hereby declare pursuant to 28 U.S.C. § 1746 that:

1. I am an attorney at Latham & Watkins LLP, counsel for Defendant Peloton Interactive, Inc. ("Peloton") in the above-captioned matter, and am a member of good standing of the Bars of the State of New York and the State of California and am admitted to practice before this Court. As such, I have knowledge of the matters set forth herein. I respectfully submit this declaration in support of Peloton's Motion for Summary Judgment and Peloton's Motion to Exclude the Testimony of Plaintiffs' Experts.¹

2. Attached as **Exhibit 1** are true and correct excerpts of Peloton's Form 10-K for the fiscal year ending on June 30, 2022, filed on September 7, 2022, with the U.S. Securities and Exchange Commission.

¹ Exhibits 2, 5, 11-12, 14-15, 21, 25, 29, 54, and 55 contain confidential personal identifying information of named Plaintiffs or third parties, or Confidential or Highly Confidential material pursuant to the Amended Protective Order (Dkt. 44) and the Supplemental Protective Order (Dkt. 223). Peloton is concurrently submitting a letter-motion to file these exhibits under seal or in redacted form.

3. Attached as **Exhibit 2** is a true and correct copy of the Declaration of Bruce A. Strombom, dated November 14, 2022 and previously filed at Dkt. 244 (sealed) and Dkt. 242 (public).

4. Attached as **Exhibit 3** is a true and correct copy of the Declaration of J. Michael Dennis, dated October 17, 2022 and previously filed at Dkt. 227.

5. Attached as **Exhibit 4** is a true and correct copy of Eric Passman's Responses and Objections to Peloton's Request for Admission, dated October 14, 2022.

6. Attached as **Exhibit 5** is a true and correct copy of Eric Passman's Peloton Order Summary for February 13, 2017, and Bates stamped PELFISHDEP0000306.

7. Attached as **Exhibit 6** are true and correct excerpts of Peloton's Form S-1 Registration Statement, filed on August 27, 2019, with the U.S. Securities and Exchange Commission.

8. Attached as **Exhibit 7** is a true and correct copy of Peloton's Terms of Service, dated February 26, 2016.

9. Attached as **Exhibit 8** is a true and correct copy of Peloton's Terms of Service, dated September 12, 2017.

10. Attached as **Exhibit 9** is a true and correct copy of Peloton's Terms of Service, dated September 14, 2018.

11. Attached as **Exhibit 10** is a true and correct copy of Peloton's Terms of Service, dated December 27, 2019.

12. Attached as **Exhibit 11** are true and correct excerpts of the Transcript of the Deposition of Ryan Dillon-Curran, dated July 21, 2021.

13. Attached as **Exhibit 12** is an Appendix of Documents that Plaintiffs Allege

Contain False or Misleading Statements.

14. Attached as **Exhibit 13** is a true and correct copy of the Declaration of Gil Aronow, dated October 14, 2021.

15. Attached as **Exhibit 14** is a true and correct copy of the Declaration of Rebecca Kirk Fair, dated November 14, 2022 and previously filed at Dkt. 247 (sealed) and Dkt. 245 (public).

16. Attached as **Exhibit 15** is a true and correct copy of a document reflecting Peloton's monthly marketing spend from April 2018 to March 2019, and Bates stamped PELFISH0301305.

17. Attached as **Exhibit 16** is a true and correct copy of the Transcript of the Deposition of Eric Passman, dated August 5, 2021 ("Passman Dep. Tr. I").

18. Attached as **Exhibit 17** is a true and correct copy of the Transcript of the Deposition of Ishmael Alvarado, dated July 15, 2021 ("Alvarado Dep. Tr. I").

19. Attached as **Exhibit 18** is a true and correct copy of Ishmael Alvarado's Supplemental Responses and Objections to Peloton's Requests for Admission, dated October 24, 2022.

20. Attached as **Exhibit 19** are true and correct copies of documents reflecting a Venmo transaction, dated January 21, 2019, and Bates stamped ALVARADO_0010640 and ALVARADO_0010641.

21. Attached as **Exhibit 20** is a true and correct copy of the Transcript of the Deposition of Ishmael Alvarado, dated September 29, 2022 ("Alvarado Dep. Tr. II").

22. Attached as **Exhibit 21** is a true and correct copy of a document reflecting the size of Peloton's on-demand class library on a monthly basis from April 1, 2018 through August

1, 2021, and Bates stamped PELFISH0018652.01.

23. Attached as **Exhibit 22** are true and correct excerpts of the Transcript of the Deposition of Graham Stanton, dated August 12, 2021.

24. Attached as **Exhibit 23** is a true and correct copy of an email from John Foley, dated March 25, 2019, and Bates stamped PELFISH0023849.

25. Attached as **Exhibit 24** are true and correct excerpts of the Transcript of the Deposition of Bradley Olson, dated July 29, 2021.

26. Attached as **Exhibit 25** is a true and correct copy of a presentation entitled “Annual Peloton US Member Survey,” dated January 2020, and Bates stamped PELFISH0271051.

27. Attached as **Exhibit 26** is a true and correct copy of the Deposition of Eric Passman, dated December 5, 2022 and December 6, 2022 (“Passman Dep. Tr. II”).

28. Attached as **Exhibit 27** is a true and correct copy of the Transcript of the Deposition of John Michael Dennis, dated October 8, 2021.

29. Attached as **Exhibit 28** is a true and correct copy of the Declaration of Joel H. Steckel, dated November 14, 2022 and previously filed at Dkt. 241.

30. Attached as **Exhibit 29** is a true and correct copy of the Declaration of Colin B. Weir, dated October 17, 2022 and previously filed at Dkt. 228 (sealed) and Dkt. 229 (public).

31. Attached as **Exhibit 30** is a true and correct copy of the Declaration of J. Michael Dennis, dated September 15, 2021 and previously filed at Dkt. 120.

32. Attached as **Exhibit 31** are true and correct excerpts of the Transcript of the Deposition of Dana McMahon, dated February 10, 2021.

33. Attached as **Exhibit 32** are true and correct excerpts of the Transcript of the

Deposition of Jill Schneider, dated February 8, 2021.

34. Attached as **Exhibit 33** is an Appendix of Sample Peloton Advertisements During the Class Period.

35. Attached as **Exhibit 34** is true and correct copy of the Transcript of the Deposition of Colin Weir, dated October 12, 2021.

36. Attached as **Exhibit 35** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated August 30, 2019, and filed in *McMorrow v. Mondelez Int'l, Inc.*, 17-cv-02327-BAS-JLB (S.D. Cal.).

37. Attached as **Exhibit 36** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated October 18, 2019, and filed in *Buckeye Tree Lodge & Sequoia Village Inn, Inc. v. Expedia, Inc.*, 16:cv-04721-VC (N.D. Cal.).

38. Attached as **Exhibit 37** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated March 19, 2021, and filed in *Maeda v. Kennedy Endeavors, Inc.*, 18-00456 JAO-WRP (D. Haw.).

39. Attached as **Exhibit 38** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated February 8, 2021, and filed in *Sharpe v. A&W Concentrate Co.*, 19-cv-00768-BMC (E.D.N.Y.).

40. Attached as **Exhibit 39** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated March 29, 2018, and filed in *Broomfield v. Craft Brew Alliance, Inc.*, 17-cv-01027-BLF (N.D. Cal.).

41. Attached as **Exhibit 40** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated April 9, 2018, and filed in *Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc.*, 17-cv-00564-NC (N.D. Cal.).

42. Attached as **Exhibit 41** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated June 15, 2018, and filed in *de Lacour v. Colgate-Palmolive Co.*, 16-cv-08364-KMW (S.D.N.Y.).

43. Attached as **Exhibit 42** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated July 30, 2018, and filed in *Bowling v. Johnson & Johnson*, 17-cv-03982-AJN-DCF (S.D.N.Y.).

44. Attached as **Exhibit 43** are true and correct excerpts of the Transcript of the Deposition of J. Michael Dennis, Ph.D., dated June 21, 2019, taken in connection with *Gregorio v. Clorox Co.*, 17-cv-3824 PJH (N.D. Cal.).

45. Attached as **Exhibit 44** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated July 16, 2019, and filed in *Cabrera v. Bayer Healthcare LLC*, 17-cv-08525-JAK-JPR (C.D. Cal.).

46. Attached as **Exhibit 45** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated June 11, 2021, and filed in *Vizcarra v. Unilever United States, Inc.*, 20-cv-02777-YGR (N.D. Cal.).

47. Attached as **Exhibit 46** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated March 22, 2022, and filed in *Hall v. Marriott International Inc.*, 19-cv-01715-JLS-AHG (S.D. Cal.).

48. Attached as **Exhibit 47** are true and correct excerpts of the reply expert report of J. Michael Dennis, Ph.D., dated July 8, 2021, and filed in *Willis v. Colgate-Palmolive, Co.*, 19-cv-08542-JGB (C.D. Cal.).

49. Attached as **Exhibit 48** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated October 12, 2021, and filed in *In Re: Rock 'N Play Sleeper*,

Marketing, Sales Practices, and Products Liability Litigation, MDL No. 19-md-2903 (W.D.N.Y.).

50. Attached as **Exhibit 49** are true and correct excerpts of the Transcript of the Deposition of J. Michael Dennis, Pd.D., dated March 8, 2016, taken in connection with *Dzielak v. Whirlpool Corporation*, 12-cv-00089-KM-SCM (D.N.J.).

51. Attached as **Exhibit 50** is a true and correct copy of a Facebook page entitled, “Peloton Members Compensation Claims,” available at https://www.facebook.com/pg/Peloton-Compensation-Claims-2391096974500448/reviews/?ref=page_internal, captured on July 12, 2021.

52. Attached as **Exhibit 51** is a true and correct copy of the Declaration of Alex Dravillas in Support of Plaintiffs’ Motion for Class Certification, dated October 17, 2022 and previously filed at Dkt. 233.

53. Attached as **Exhibit 52** is a true and correct copy of a document with a heading stating, “More than 10,000 boutique classes. And that’s just the start,” and Bates stamped PELFISH0254457.

54. Attached as **Exhibit 53** is a true and correct copy of a document showcasing Peloton’s offerings for “Elevated Total Body Fitness,” “Train with World-Class Instructors,” “Motivating Live Metrics,” and “Training on Your Time,” and Bates stamped PELFISH0254467.

55. Attached as **Exhibit 54** is a true and correct copy of a document titled “National Radio Scripts,” and Bates stamped PELFISH0078438.

56. Attached as **Exhibit 55** is a true and correct copy of Plaintiffs’ Exhibit 16, a document annexed to the Declaration of Alex Dravillas in Support of Plaintiffs’ Motion for Class Certification, dated October 17, 2022 and previously filed at Dkt. 232-17 (sealed) and Dkt. 233-

17 (public).

57. Attached as **Exhibit 56** is a true and correct copy of Plaintiffs' Exhibit 40, a document annexed to the Declaration of Alex Dravillas in Support of Plaintiffs' Motion for Class Certification, dated October 17, 2022 and previously filed at Dkt. 232-41.

58. Attached as **Exhibit 57** are true and correct excerpts of the expert report of J. Michael Dennis, Ph.D., dated Sept. 5, 2017, and filed in *Brenner v. Procter & Gamble Co.*, No. 8:16-1093-JLS-JCG (C.D. Cal.).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on the 4th day of December 2023.



Steven N. Feldman